

**SUBMISSION TO THE STANDING COMMITTEE ON  
INDUSTRY, SCIENCE AND TECHNOLOGY  
FOR THE COMMITTEE'S STATUTORY REVIEW OF THE  
*COPYRIGHT ACT***

**Standing Committee on Industry, Science and Technology  
Sixth Floor, 131 Queen Street  
House of Commons  
Ottawa, ON K1A 0A6**

**About Campus Stores Canada**

Campus Stores Canada (CSC) is the only organization in Canada that serves institutionally-owned and operated university and college campus stores. More than 80 member stores nationwide serve Canada's million post-secondary students by ensuring fair and legal access to high quality learning resources essential to the advancement of knowledge and success.

CSC's mission is to provide a voice for and deliver quality educational materials and services to Canadian post-secondary, institutionally owned and operated campus stores, enabling them to serve their institutions in the most effective manner to ensure student success.

The overall value statement reflective of this membership is that CSC shall conduct its affairs with integrity, transparency, and accountability to its members and other stakeholders.

It is with these values and intentions that Campus Stores Canada appreciates this opportunity to share its views on the *Copyright Act*, particularly as it relates to the critical balance between the rights of content creators and content users.

## **Core Perspective from the Front Lines of Education**

Faculty, staff, and students of Canada's colleges and universities are primary users of copyright-protected material, and they are often also the authors and creators of this content. Thus, the desire for balance in protecting the rights of creators is as inherent in the very lifeblood of CSC members as the desire to ensure equitable access to this content for students and educators.

CSC believes that any legislation which supports decision making farther away from the front lines of education (the afore-mentioned faculty, staff and students), is not providing value where it is urgently needed. The existing guidelines for education under fair dealing allow for the proper degree of respect for copyright directly on campuses across Canada while being able to achieve the core mandate of sourcing legal accessible educational materials for students.

A 2016 report from the *American Council on Education* states that higher education institutions could learn from other industries the importance of frontline empowerment of multiple individuals within their roles rather than special-interest stakeholder diversity when decision-making is centralized. Furthermore, institutions need to empower decentralized decision making that uses transparent, relevant information.<sup>i</sup>

Fair dealing as it currently exists clearly outlines specific, transparent and measurable use by higher education institutions that allows for flexibility of providing creative solutions for engaging, affordable and effective education while simultaneously protecting the rights of content creators.

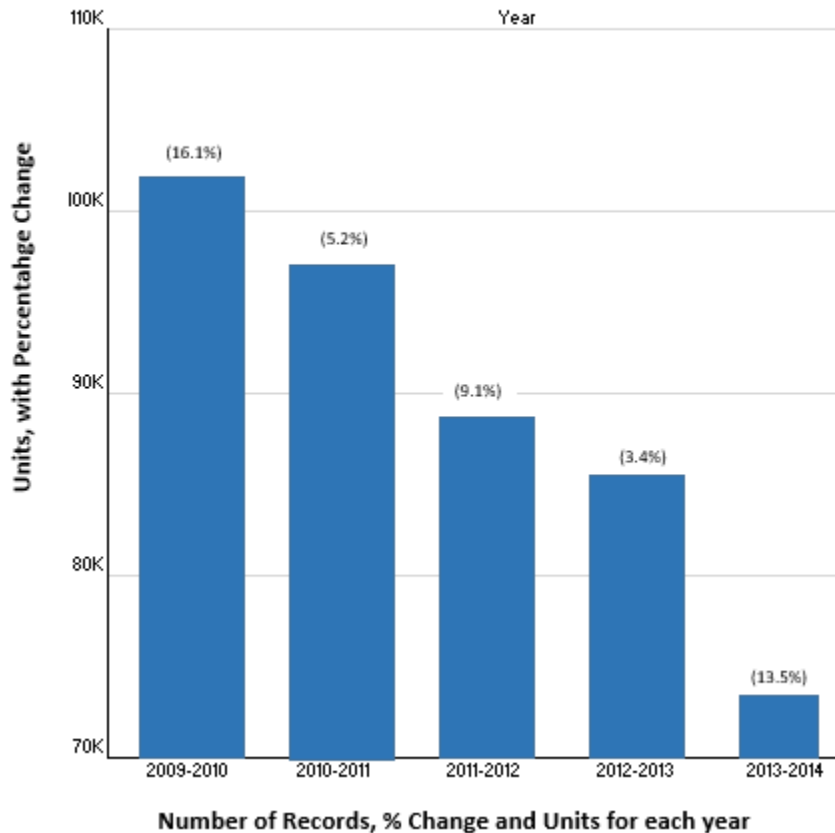
## **Changing Landscapes in Education and Course Materials**

As the publishing industry shifts from print to digital learning materials, stakeholders involved in course materials are challenged to redefine their roles within this changing landscape. Stakeholders closest to the front lines of education are focusing on adapting to the changes and applying innovative strategies, while parties farther away from the front lines seek restrictive and backwards-looking legislation that stifles creativity and, ultimately, effective pathways to learning.

The suggestions by collective societies that the educational publishing industry has been negatively impacted by fair dealing neglect to acknowledge that the significant decline in revenue began well before Canada updated the *Copyright Act* to include fair dealing for educational use.<sup>ii</sup>

## New Course Book Unit Sales

Average unit sales across 74 stores in North America, including 15 from Canada



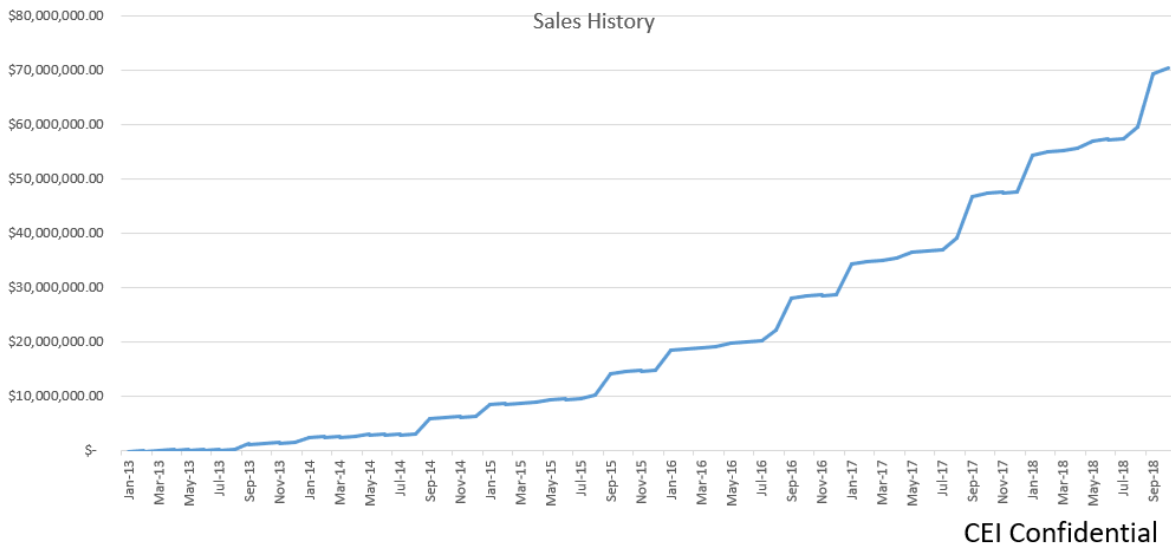
Data provided by Canadian universities conclusively shows that this represents a shift in spending, rather than a decline in revenue, with more money being spent on licensing as institutions invest heavily in access to materials that can be used in classrooms for research purposes.<sup>iii</sup>

Since the 2012 implementation of the *Copyright Modernization Act*, universities and colleges have spent millions of dollars annually on the acquisition and licencing of copyrighted content.

As the prices of printed course materials have continued to increase, students no longer see value in expensive single-use textbooks and, as the end users of learning materials, they seek out other options.

*Campus eBookstore*, a company that allows campus stores to offer digital course materials to students, has seen consistent growth in sales of new innovative born-digital products.<sup>iv</sup>

# Cumulative sales from Jan 2013



The dramatic decline in textbook unit sales is paralleled by a similarly steep rise in the provision of innovative digital material. This is not evidence of the negative impact of fair dealing on the industry but rather evidence that students value purchasing accessible learning resources over out-dated and restrictive models of accessing reading material.

Reports from collective licencing societies appear to be more about protecting a declining business model than about protecting copyright, protecting content creators, or protecting user access to resources for twenty-first century education.

The application of a blanket tariff on all students at the institution level stifles innovation, creativity and collaboration between the stakeholders invested in furthering education. It works in direct opposition to the importance of continually adapting to a dynamic and ever-changing educational market.

*Top Hat*, a Toronto-based company founded in 2009, allows for collaborative publishing and engaging technology, while saving students the high cost of physical textbooks. A look at their business model challenges traditional publishing models, resulting in lost sales from textbook publishers. These “lost sales” are not the result of “illegal” copying on campuses, but instead, more likely being diverted to innovative new opportunities. *Top Hat* materials cost an average of \$53 for students.<sup>v</sup> A 2016 *Financial Post* article reported *Top Hat* was estimated to earn \$27 million in revenue that year<sup>vi</sup>, and in November 2018, the company ranked 200<sup>th</sup> Fastest Growing Company in North America on Deloitte’s 2018 Technology Fast 500.<sup>vii</sup>

If the collective society can issue a tariff on the post-secondary education sector, who really stands to benefit from this? It is not content creators and students on the front lines of education. Closed copyright does not benefit an open and competitive business environment. Nor does it further the post-secondary education market for the most important stakeholder groups: students and faculty.

The growing digital landscape presents both a challenge and an opportunity. However, it must be something that we address by ensuring flexibility for innovation and not by leveraging blanket fees for services and products that students might not use or need.

Fair dealing provides a flexible provision that achieves the proper balance between copyright owners and the rights of users. Proposals to limit fair dealing for education are unnecessary and would result in limiting academic freedom for students and educators in research and teaching.

### **Opportunities for Sharing, Collaboration and Innovation**

Canada needs to continue to protect and strengthen limitations and exceptions to copyright which consistently lead to more robust options and opportunities within Canada's education system and in cutting-edge industry innovations.

In addition, Canada needs to acknowledge and respect innovations that have emerged from the digital growth and change we have seen, which allows creators the ability to share and collaborate in ways that further enhance and support creativity and knowledge.

*Creative Commons* (CC) is one such example of a global non-profit organization that provides simple, standardized terms. CC licenses have been applied to over 1.4 billion copyrighted works around the world and are regularly leveraged by educators who can easily access and adapt this material to enhance their teaching.<sup>viii</sup>

*Public Domain* itself provides building blocks for the creation of new knowledge, allows access to cultural heritage through information resources and promotes education and innovation through the spreading of information, ideas and scientific principles. The current term of copyright protection of the life of the author plus 50 years does not need to be extended. An *Australian Bureau of Statistics* report estimates that literary works provided commercial returns for between 1.4 to 5 years on average.<sup>ix</sup> Further, provisions to the *Copyright Act* for clear and simple processes for rights holders to opt their work into the public domain before the end of the term of copyright protection should be considered in order to better serve public domain's purpose in providing an incentive for the creation of new works.

Digital publishing evolution now allows content creators the ability to earn more money than ever before at reasonable and affordable prices to end consumers. Canadian eBook retailer *Kobo*, for example, has created a self-publishing platform, *Kobo Writing Life* that allows creators to

upload their works directly to retail websites, with authors earning higher royalties (70% vs 8%) while maintaining full control over price and their copyright. These titles represent 20 to 25% of all English-language books sold on Kobo.com.<sup>x</sup>

It is obvious that innovation within publishing and education based on leveraging new technology rather than imposing further restrictions on fair dealing can lead to growth, profit, and success for creators, while providing valuable and engaging content for consumers.

## **Recommendation Summary**

Campus Stores Canada believes that any revisions or reforms of copyright law or the *Copyright Act* are of direct concern and impact to the educational community. And, as such, makes the following recommendations:

- **Maintain existing rules and regulations related to fair dealing.**
- **Implement a process that allows rights holders the ability to designate their own terms of use or to place materials into the public domain.**
- **Offer no extension to the existing copyright term.**
- **Published Crown works should immediately become part of the public domain or be openly licenced.**
- **Establish an exception within the anti-circumvention rules to allow for circumvention for any lawful purpose.**

## **Conclusion**

It is critical that copyright law reflects a fair balance between the rights of creators to benefit financially from their work and the rights of users to ensure affordable and flexible access to that content.

Campus Stores Canada supports a model that does not legislate powers to a collective licencing agency for the provision of blanket tariffs. A pay per use, or transactional model, for instance, is a far more reasonable recommendation to ensure fairness to both creators and educators that ensures compensation related directly to use of materials. Blanket tariffs based on assumptions from outdated models and egregious extrapolations<sup>xi</sup> are restrictive to industry progress and innovation.

As was stated so eloquently in *Théberge v. Galerie*, excessive control by rights holders may unduly limit the ability of the public domain to incorporate and embellish creative innovation in the long-term interests of society as a whole.<sup>xii</sup>

When restrictions are imposed upon students and educators, innovation, engagement and effectiveness suffer. This has a detrimental effect on the overall health of Canada's ecosystems and infrastructures.

Copyright needs to serve the Canadian public. It best serves the interest of Canadians when it strikes a balance between the recognition, rights, and reward of creators and the ability and interest of users in learning, benefiting from and building further upon those works.

CSC fully respects and supports the existing fair dealing provisions of the *Copyright Act* and implores the Government to preserve this in future updates to the *Act*, not only for the empowerment and benefit of millions of educators and students, but for the benefit of Canada's economic health and ongoing industry innovations.

For additional information or questions, please contact :

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<sup>i</sup> Soares, Louis, Patricia Steele, and Lindsay Wayt. “Evolving Higher Education Business Models: Leading with Data to Deliver Results.” 2016. Washington, DC: American Council on Education. <https://www.acenet.edu/news-room/Documents/Evolving-Higher-Education-Business-Models.pdf>.

<sup>ii</sup> [Chart from Figure 1: Independent College Stores Report].

<sup>iii</sup> Geist, Michael. “Canadian Copyright, OA, and OER: Why the Open Access Road Still Leads Back to Copyright.” *Michael Geist*. October 26, 2017. <http://www.michaelgeist.ca/2017/10/canadian-copyright-oa-oer-open-access-road-still-leads-back-copyright/>.

<sup>iv</sup> [Chart from Figure 2: Cumulative Sales of digital materials by Campus eBookstore].

<sup>vi</sup> “How Top Hat is winning over the edtech market one professor at a time.” *Financial Post*, October 25, 2016. <https://business.financialpost.com/entrepreneur/growth-strategies/how-top-hat-is-winning-over-the-edtech-market-one-professor-at-a-time>.

<sup>vii</sup> “Top Hat Ranked Number 200 Fastest Growing Company in North America on Deloitte’s 2018 Technology Fast 500™” *Business Wire*, November 19, 2018. <https://www.businesswire.com/news/home/20181119005879/en/>.

<sup>viii</sup> Merkley, Ryan. “A Transformative Year: State of the Commons 2017.” *Creative Commons*. May 8, 2018. <https://creativecommons.org/2018/05/08/state-of-the-commons-2017/>.

<sup>ix</sup> <https://www.pc.gov.au/inquiries/completed/intellectual-property/report/intellectual-property.pdf> (page 130).

<sup>x</sup> Reid, Calvin, “Kobo’s Michael Tamblin Talks Walmart and E-books.” *Publishers Weekly*, February 16, 2018. <https://www.publishersweekly.com/pw/by-topic/digital/retailing/article/76097-kobo-s-michael-tamblin-talks-walmart-and-e-books.html>.

<sup>xi</sup> Geist, Michael. “Misleading on Fair Dealing, Part 7: My Appearance Before the Standing Committee on Canadian Heritage.” *Michael Geist*, November 28, 2018. <http://www.michaelgeist.ca/2018/11/misleading-on-fair-dealing-part-7/>.

<sup>xii</sup> *Théberge v. Galerie d'Art du Petit Champlain inc.*, [2002] 2 S.C.R. 336, 2002 SCC 34.